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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,445	08/05/2003	Betty Birnbaum	1067-001	8287

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EXAMINER

GUIDOTTI, LAURA COLE

ART UNIT PAPER NUMBER

1744

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/634,445		BIRNBAUM, BETTY	
	<b>Examiner</b>		<b>Art Unit</b>	
	Laura C. Guidotti		1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) 6-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 6-21 drawn to an invention nonelected with traverse in the response of 13 October 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
2. Newly submitted claims 23-23 (the Applicant submitted two new claims, both numbered as claim "23"; the remarks of 28 March 2006 state that new claims 22 and 23 have been added, however there is a previous claim 22 that was originally filed and is withdrawn) are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 23-23, which are dependent on withdrawn claim 21, are drawn to the embodiment of Figures 11-12 (a tool having a straight edge having sinuous curvature on each of two opposite sides of the member, each straight edge disposed perpendicular to the undulations, a scrubbing edge on each of the two other opposite sides of the member, each scrubbing edge disposed parallel to the undulations). In the response to the restriction requirement of 13 October 2005, the Applicant had elected the embodiment of the first species, Figures 1-6.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 23-23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson, USPN 3,178,747 in view of Killins, USPN D402,514 and Darrin, USPN 1,211,098.

Peterson discloses the claimed invention including a flexible member (2; Column 1 Line 52 to Column 2 Line 3) formed with a plurality of undulations (20, 22, 24; Column 2 Lines 14-16) and a plurality of edges defined by the shape of the member and the curvature of the undulations (4, 6, 8, 10). The plurality of edges (4, 6, 8, and 10) do not include an edge having a S-shaped curvature, a rounded edge, or edges having sinuous curvature, or a sharp tip formed at an intersection of a straight edge and an end of the fingernail edge making an acute angle. Regarding claim 3, Peterson further includes a lip (the "lip" edge is at "6" facing downwardly as shown in Figure 3).

Killins discloses a cleaning tool that is for universal radius forming and cleaning (see Title). The cleaning tool of Killins includes a straight edge (see bottommost edge as shown in Figure 3), a fingernail edge intersecting the straight edge having an S-shape and sinuous curvature and intersects the straight edge at an end of the S-shape (see rightmost edge as shown in Figure 3), a rounded edge disposed on a side of the member opposite the straight edge (see uppermost edge as shown in Figure 3), and a further edge having a sinuous curvature disposed on a side member opposite the fingernail edge (see leftmost edge as shown in Figure 3), wherein there is a sharp tip

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formed at the intersection of the straight edge and the fingernail edge (see corner formed on rightmost edge as shown in Figure 3). Killins does not disclose that the fingernail edge intersects a straight edge at an end of the S-shape making an acute angle with the straight edge and that the sharp tip is formed by the intersection of the straight edge and the end of the S-shape of the fingernail edge making an acute angle with the straight edge.

Darrin teaches a scraper tool that has a plurality of edges including a straight edge (2) and a fingernail edge intersecting the straight edge (including edges 4, 5, 9), the fingernail edge having an "S-shape" (see Figure 4) and intersects the straight edge at an end of S-shape making an acute angle with the straight edge (12), wherein a sharp tip is formed by the intersection of the straight edge and the end of the S-shape of the fingernail edge making an acute angle with the straight edge (12, C). Darrin teaches a scraper that is deigned to have an angle for every corner and an edge for every surface of a dish (Page 1 Lines 98-100).

It would have been obvious for one of ordinary skill in the art to modify the generally straight edges of Peterson for the varying edges that Killins teaches, so that a user may be capable of cleaning or scraping objects having various curvatures or radii and further it would have been obvious for one of ordinary skill in the art to further modify Peterson and Killins so that the fingernail edge intersects the straight edge making an acute angle with the straight edge, wherein a sharp tip is formed by the intersection making an acute angle with the straight edge, as Darrin teaches, in order to provide a specific designed edge shape appropriate for scraping a plate.

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4. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killins, USPN D402,514 in view of Darrin, USPN 1,211,098 and Peterson, USPN 3,178,747.

Killins, Peterson, and Darrin disclose all elements above. However, Killins and Darrin do not disclose that the tool is flexible or that it is formed with a plurality of undulations. Peterson further discloses that the device "2" is flexible and has an improved gripping manner so that the user is able to position the scraper more effectively against a device being cleaned (Column 1 Lines 27-33, Column 2 Lines 16-18). Also, neither Killins or Peterson disclose that the fingernail edge intersects a straight edge at an end of the S-shape making an acute angle with the straight edge and that the sharp tip is formed by the intersection of the straight edge and the end of the S-shape of the fingernail edge making an acute angle with the straight edge.

It would have been obvious for one of ordinary skill in the art to modify the edges of Killins so that the fingernail edge intersects the straight edge making an acute angle with the straight edge, wherein a sharp tip is formed by the intersection making an acute angle with the straight edge, as Darrin teaches, in order to provide a specific designed edge shape appropriate for scraping a plate and further it would have been obvious for one of ordinary skill in the art to modify the cleaning tool body of Killins and Darrin to be made of a flexible material having undulations, as Peterson teaches, so that a user can grip and position the cleaning scraper more effectively against a surface that is to be cleaned.

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5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killins, USPN D402,514, Darrin, USPN 1,211,098, and Peterson, USPN 3,178,747 as applied to Claim 3, in view of Sheridan, USPN 1,538,521.

Killins, Darrin, and Peterson disclose all elements above, however do not include a lower surface having a roughened region disposed along an undulation. The device of Peterson includes an upper and a lower surface (see uppermost and lowermost portions as displayed in Figure 2).

Sheridan teaches a scraper for cooking utensils that has an undulation (formed at portion "11") and an upper surface and lower surface (see uppermost and lowermost surfaces as shown in Figures 2-3), wherein the lower surface has a roughened region disposed along an undulation (12; Page 1 Lines 73-74) so that the device can be held by a user more steadily (Page 1 Lines 77-81).

It would have been obvious for one of ordinary skill in the art to modify an undulation of the device of Killins, Darrin, and Peterson to include a roughened region, as Sheridan teaches, so that a user may hold the cleaning device more steadily.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killins, USPN D402,514, Darrin, USPN 1,211,098, Peterson, USPN 3,178,747, and Sheridan, USPN 1,538,521 as applied to Claim 4, in view of Houghton, USPN 614,810.

Killins, Darrin, Peterson, and Sheridan disclose all elements above, however do not disclose a rounded edge that is sharpened.

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Houghton also discloses all elements above, including side edges that are sharpened (Figure 3; Page 1 Lines 42-44). Figures 2-3 of Houghton display that all of the edges are sharpened (except portions which are toothed).

It would have been obvious for one of ordinary skill in the art to modify the rounded edge of the device of Killins, Darrin, Peterson, and Sheridan to be sharpened, as Houghton teaches, in order to scrape and remove debris from surfaces.

### ***Response to Arguments***

7. Applicant's arguments filed 28 March 2006 have been fully considered but they are not persuasive.

In Killins, there is in fact an "S-shape" in the rightmost edge of the cleaning tool as shown in Figure 3. The "S-shape" of Killins in Figure 3 appears to be stretched in a longitudinal direction or alternatively it appears that the last curve of the "S-shape" is extended, however it is still considered to be an "S-shape" by the Examiner. The Examiner is confused as to how the Applicant considers the edge to be "bell-shaped."

8. Applicant's additional arguments with respect to claims 1 and 3-5 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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